

Nicholas J. Bontrager, Esq. (SBN 252114)
Krohn & Moss, Ltd.
10474 Santa Monica Blvd., Suite 401
Los Angeles, CA 90025
T: (323) 988-2400; F: (866) 802-0021
nbontrager@consumerlawcenter.com
Attorneys for Plaintiff,
MICHAEL EVANS

FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. SAN JOSE

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA,
SAN JOSE DIVISION

MICHAEL EVANS,

Plaintiff,

v.

PORTFOLIO RECOVERY ASSOCIATES,

LLC,

Defendant.

Case No.

CV 11-01862

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

VERIFIED COMPLAINT

MICHAEL EVANS (Plaintiff), by his attorneys, KROHN & MOSS, LTD., alleges the following against PORTFOLIO RECOVERY ASSOCIATES, LLC (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. (FDCPA).
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. (RFDCPA).

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court

1 without regard to the amount in controversy,” and 28 *U.S.C. 1367* grants this court
2 supplemental jurisdiction over the state claims contained therein.

3 4. Defendant conducts business in the state of California, and therefore, personal
4 jurisdiction is established.

5 5. Venue is proper pursuant to 28 *U.S.C. 1391(b)(2)*.

6 **PARTIES**

7 6. Plaintiff is a natural person residing in Scotts Valley, Santa Cruz County, California.

8 7. Plaintiff is a consumer as that term is defined by 15 *U.S.C. 1692a(3)*, and according to
9 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 *U.S.C. 1692a(5)*
10 and *Cal. Civ. Code § 1788.2(h)*.

11 8. Defendant is a debt collector as that term is defined by 15 *U.S.C. 1692a(6)* and *Cal. Civ.*
12 *Code §1788.2(c)*, and sought to collect a consumer debt from Plaintiff.

13 9. Defendant is a national company with its headquarters in Norfolk, Virginia.

14 **FACTUAL ALLEGATIONS**

15 10. Defendant constantly and continuously places collection calls to Plaintiff seeking and
16 demanding payment of an alleged debt since January 2011.

17 11. Defendant is attempting to collect a debt for Kay Jewelers from 1982.

18 12. Defendant calls Plaintiff almost everyday, sometimes up to three (3) times in a single
19 day (See Exhibit A).

20 13. Defendant calls Plaintiff on his cellular telephone at (831) 435-0541.

21 14. Plaintiff disputed the debt with Defendant over the telephone several times and
22 requested that Defendant stop calling. Despite Plaintiff's request, Defendant continues to
23 call Plaintiff seeking and demanding payment of an alleged debt.

24 15. When Plaintiff's children answer the telephone, Defendant's representative falsely
25 identified himself as being a friend of Plaintiff.

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

16. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, and abuse Plaintiff.
- b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
- c. Defendant violated §1692e(10) of the FDCPA by using false and deceptive means in an attempt to collect a debt when Defendant informed Plaintiff's children over the telephone that he was a friend of Plaintiff.

WHEREFORE, Plaintiff, MICHAEL EVANS, respectfully requests judgment be entered against Defendant, PORTFOLIO RECOVERY ASSOCIATES, LLC, for the following:

17. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,
18. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k
19. Any other relief that this Honorable Court deems appropriate.

COUNT II
DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

20. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

21. Defendant violated the RFDCPA based on the following:

- a. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone to ring repeatedly and continuously so as to annoy Plaintiff.
- b. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to Plaintiff with such frequency that was unreasonable and constituted harassment.

1 c. Defendant violated the §1788.17 of the RFDCPA by continuously failing to
2 comply with the statutory regulations contained within the FDCPA, 15 U.S.C. §
3 1692 *et seq.*

4 WHEREFORE, Plaintiff, MICHAEL EVANS, respectfully requests judgment be entered
5 against Defendant, PORTFOLIO RECOVERY ASSOCIATES, LLC, for the following:

6 22. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices
7 Act, *Cal. Civ. Code §1788.30(b)*,

8 23. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection
9 Practices Act, *Cal. Civ Code § 1788.30(c)*, and

10 24. Any other relief that this Honorable Court deems appropriate.

11 **DEMAND FOR JURY TRIAL**

12 PLEASE TAKE NOTICE that Plaintiff, MICHAEL EVANS, demands a jury trial in this
13 cause of action.

14
15 RESPECTFULLY SUBMITTED,

16 DATED: April 13, 2011

KROHN & MOSS, LTD.

17
18 By: 

19 Nicholas J. Bontrager
20 Attorney for Plaintiff
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VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF CALIFORNIA

Plaintiff, MICHAEL EVANS, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, MICHAEL EVANS, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

DATE: 4-5-2011


MICHAEL EVANS

EXHIBIT A

CALL LOG FROM FORT FOLLO RECOVERY ASSOCIATES
FROM MIKE EVANS - 831-435-0541

- 1) January 28 2011 440-580-0720 9:54 AM
- 2) January 31 2011 404-592-5171 8:58 AM
- 3) January 31 2011 205-588-8187 3:31 PM
- 4) February 2 2011 702-410-7069 10:23 AM
- 5) February 2 2011 620-798-6464 12:49 PM
- 6) February 2 2011 678-265-1568 4:36 PM
- 7) February 4 2011 847-994-2540 12:17 PM
- 8) February 6 2011 859-918-0780 3:51 PM
- 9) February 7 2011 510-355-1780 11:30 AM
- 10) Feb 9 2011 678-265-1568 10:20 AM
- 11) Feb 11 2011 858-346-1184 10:46 AM
- 12) Feb 14 2011 626-209-2241 9:34 AM
- 13) Feb 15 2011 510-355-1780 11:19 AM
- 14) Feb 17 2011 702-410-7069 12:18 PM
- 15) Feb 18 2011 617-581-1060 10:37 AM
- 16) Feb 21 2011 626-209-2241 12:13 PM
- 17) Feb 21 2011 510-355-1780 6:16 PM

- ⑮ Feb 22 2011 617-581-1060 10:19 AM
- ⑰ Feb 22 2011 678-265-1568 10:59 AM
- 20 Feb 24 2011 847-994-2540 11:54 AM
- 21 Feb 25 2011 847-994-2540 12:01 PM
- 22 Feb 28 2011 626-209-2241 10:29 AM
- 23 MAR 1 2011 617-581-1060 11:37 AM
- 24 MAR 2 2011 678-265-1568 11:33 AM
- 25 MAR 2 2011 702-410-7069 4:55 PM
- 26 MAR 3 2011 702-410-7069 4:34 PM
- 27 MAR 6 2011 617-581-1060 9:55 PM
- 28 MAR 9 2011 678-265-1568 2:06 PM
- 29 MAR 9 2011 702-410-7069 6:15 PM
- 30 MAR 10 2011 847-994-2540 3:50 PM
- 31 MAR 12 2011 858-346-1184 8:44 AM
- 32 MAR 14 2011 510-355-1780 12:00 PM
- 33 MAR 15 2011 510-355-1780 10:19 AM
- 34 MAR 17 2011 702-410-7069 11:21 AM
- 35 MAR 20 2011 626-209-2241 1:59 PM